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Attorney for Plaintiff
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ALBERT DYTCH,)	No.
)	
Plaintiff,)	COMPLAINT ASSERTING DENIAL OF
)	RIGHT OF ACCESS UNDER THE
vs.)	AMERICANS WITH DISABILITIES ACT
)	FOR INJUNCTIVE RELIEF, DAMAGES,
HOME DEPOT U.S.A., INC., dba HOME)	ATTORNEYS' FEES AND COSTS (ADA)
DEPOT #627; EAST BAY BRIDGE RETAIL,)	
LLC;)	
)	
Defendants.)	

I. SUMMARY

1. This is a civil rights action by plaintiff ALBERT DYTCH ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Home Depot #627
3838 Hollis Avenue
Emeryville, CA 94608
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against HOME DEPOT U.S.A., INC., dba HOME DEPOT #627, and EAST BAY BRIDGE RETAIL, LLC (hereinafter collectively referred to as "Defendants"), pursuant to

1 Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”)
2 and related California statutes.

3 **II. JURISDICTION**

4 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
5 claims.

6 4. Supplemental jurisdiction for claims brought under parallel California law –
7 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

8 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

9 **III. VENUE**

10 6. All actions complained of herein take place within the jurisdiction of the United
11 States District Court, Northern District of California, and venue is invoked pursuant to 28
12 U.S.C. § 1391(b), (c).

13 **IV. PARTIES**

14 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
15 persons), firm, and/or corporation.

16 8. Plaintiff suffers from muscular dystrophy. As a result, he is substantially limited
17 in his ability to walk, has limited dexterity, and must use a wheelchair for mobility.
18 Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and
19 United States laws, and a member of the public whose rights are protected by these laws.

20 **V. FACTS**

21 9. The Facility is open to the public, intended for non-residential use, and its
22 operation affects commerce. The Facility is therefore a public accommodation as defined by
23 applicable state and federal laws.

24 10. Plaintiff lives near the Facility and visited the Facility on or about June 28,
25 2015, October 23, 2015, November 28, 2015, December 9, 2015, and February 3, 2016 for the
26 purpose of shopping for home improvement products. During his visits to the Facility, Plaintiff
27 encountered the following barriers (both physical and intangible) that interfered with, if not
28 outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and

1 accommodations offered at the Facility:

- 2 a) During each of Plaintiff's visits, he parked in a designated accessible
3 parking stall and deployed a ramp in order to unload his wheelchair from
4 the passenger side of his vehicle. The access aisles next to the
5 designated accessible parking stalls were not wide enough, making it
6 difficult for Plaintiff to safely deploy his ramp and unload from his
7 vehicle.
- 8 b) During Plaintiff's February 3, 2016 visit, there were also several
9 shopping carts located within the access aisle next to Plaintiff's vehicle,
10 and he had to partially deploy his ramp several times in order to move
11 the carts sufficiently out of the way so that he could unload. The carts
12 were not collected by Facility staff within the time Plaintiff was inside
13 the store, so he also had difficulty reentering his vehicle upon his return.
- 14 c) During each of Plaintiff's visits, the walkway in front of the Facility
15 entrances and exits was obstructed by merchandise, displays, and/or
16 parked vehicles, which reduced the clear width of the route of travel and
17 prevented Plaintiff from wheeling down the walkway in order to travel
18 between his parking space and the entry/exit. Instead, he was forced to
19 travel out into the path of vehicular traffic in order to avoid the
20 obstacles.
- 21 d) During Plaintiff's December 9, 2015 and February 3, 2016 visits, the
22 service and return transaction counters were too high for him to reach
23 the electronic signature machine or receive paperwork that was placed
24 on top of the counter. The electronic signature machine had a short cord
25 which did not reach down to Plaintiff in his wheelchair, so he struggled
26 to sign it.

27 11. The barriers identified in paragraph 10 herein are only those that Plaintiff
28 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist

1 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once
2 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
3 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

4 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
5 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
6 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
7 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
8 once the barriers are removed.

9 13. Defendants knew, or should have known, that these elements and areas of the
10 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
11 the physically disabled. Moreover, Defendants have the financial resources to remove these
12 barriers from the Facility (without much difficulty or expense), and make the Facility
13 accessible to the physically disabled. To date, however, Defendants refuse to either remove
14 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

15 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
16 and authority to modify the Facility to remove impediments to wheelchair access and to
17 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
18 Accessible Design. Defendants have not removed such impediments and have not modified the
19 Facility to conform to accessibility standards. Defendants have intentionally maintained the
20 Facility in its current condition and have intentionally refrained from altering the Facility so
21 that it complies with the accessibility standards.

22 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
23 so obvious as to establish Defendants' discriminatory intent. On information and belief,
24 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
25 to relevant building standards; disregard for the building plans and permits issued for the
26 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
27 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
28 property continues to exist in its non-compliant state. Plaintiff further alleges, on information

1 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
2 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

3 **VI. FIRST CLAIM**

4 **Americans with Disabilities Act of 1990**

5 Denial of “Full and Equal” Enjoyment and Use

6 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
7 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

8 17. Title III of the ADA holds as a “general rule” that no individual shall be
9 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
10 goods, services, facilities, privileges, and accommodations offered by any person who owns,
11 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

12 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
13 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
14 Facility during each visit and each incident of deterrence.

15 Failure to Remove Architectural Barriers in an Existing Facility

16 19. The ADA specifically prohibits failing to remove architectural barriers, which
17 are structural in nature, in existing facilities where such removal is readily achievable. 42
18 U.S.C. § 12182(b)(2)(A)(iv).

19 20. When an entity can demonstrate that removal of a barrier is not readily
20 achievable, a failure to make goods, services, facilities, or accommodations available through
21 alternative methods is also specifically prohibited if these methods are readily achievable. Id.
22 § 12182(b)(2)(A)(v).

23 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
24 barriers at the Facility without much difficulty or expense, and that Defendants violated the
25 ADA by failing to remove those barriers, when it was readily achievable to do so.

26 22. In the alternative, if it was not “readily achievable” for Defendants to remove
27 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
28 services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.

1 3. Attorneys' fees, litigation expenses, and costs of suit.²

2 4. Interest at the legal rate from the date of the filing of this action.

3 5. For such other and further relief as the Court deems proper.

4 Dated: April 15, 2016

MOORE LAW FIRM, P.C.

6 /s/ Tanya E. Moore

7 Tanya E. Moore

8 Attorney for Plaintiff

9 Albert Dytch

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² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, ALBERT DYTCH, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: April 15, 2016

/s/ Albert Dytch
Albert Dytch

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore
Tanya E. Moore, Attorney for
Plaintiff, Albert Dytch